

Book Review: Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel: The OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2008

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The importance of the relationship between human rights and armed forces personnel can hardly be challenged. It has largely been a success of the OSCE to enhance this relationship in a broader rationale for ensuring democratic control of armed forces within a system of governance based on the rule of law and human rights. A crowning result of this approach was the adoption on 3 December 1994 of the 'OSCE Code of Conduct on Politico-Military Aspects of Security'. The Code adopts, as underlined in the handbook, 'an innovative approach that bridges both the human and military dimension of security' (p. 29), the approach which offers one of the best reflections of the OSCE concept of 'comprehensive security'. The continued relevance of the relationship in question, notably from constitutional perspective, was confirmed by a number of studies and reports of the Venice Commission, notably the comprehensive 'Report on the Democratic Control of the Armed Forces' as adopted by the Venice Commission in March 2008.¹

In addition to comprehensive security considerations, this handbook has also been inspired by the recognition that military personnel as 'citizens in uniform' are entitled to the same human rights and fundamental freedoms as all other citizens although their enjoyment may be limited in specific circumstances of military and security demands, as may be the case of limitations on the rights to freedom of expression, assembly and association, the right to strike and others. Notwithstanding these possible lawful limitations, the approach based upon the concept of 'citizens in uniform' commendably enhanced an understanding that entering a military service, as conscript or career professional, is not tantamount to suspension of their human rights and fundamental freedoms. According to the well established case law of the European Court of Human Rights, the mere fact of joining the armed forces voluntarily does not result in a waiver of human rights (p. 19).

Taking the whole problem seriously, the ODIHR initiated a project to develop further an earlier version of this handbook. The names of the handbook authors are not displayed on a cover page but only in the *Acknowledgements*. Their *nomina non sunt odiosa* and therefore they all deserve to be mentioned: Prof. Ian Leigh of the Durham University Human Rights Centre (United Kingdom) and Dr. Hans Born of the Geneva Centre for the Democratic Control of the Armed Forces (DCAF), Switzerland, with the assistance of Ms. Cecilia Lazzarini (DCAF) and Mr. Ian Clements (Durham University).

For implementation of the ODIHR-DCAF project in such a vast and complex area across the whole OSCE region the authors decided to apply an elaborate research strategy. The methodology applied by the authors envisaged such stages as questionnaire, roundtables, input from NGOs and OSCE field operations and a final expert review. This approach explains to a large extent why the handbook is so informative, meticulous and comprehensive. As a side- effect, this methodology contributed to arousing a greater interest from the scholarly community in focusing research on the unique consequences of the relationship between human rights and military personnel, a research area largely overlooked to date.²

As declared in the *Preface* to the handbook, the authors aimed at presenting 'an overview of legislation, policies, and mechanisms for ensuring the protection and enforcement of the human rights and fundamental freedoms of armed forces personnel.' (p. 11). The handbook went further by showing country examples of legal and policy arrangements in the OSCE region, while making a reservation that there is no single best model

1 See Report on the Democratic Control of the Armed Forces adopted by the Venice Commission at its 74th Plenary Session (Venice, 14-15 March 2008), CDL-AD(2008) 004. For the list of numerous other studies and reports drawn up by the Venice Commission on the issues pertaining to human rights, democracy and military sector see its website: www.venice.coe.int/docs.

2 As a result of the increased research see, for instance, Peter Rowe, *The Impact of Human Rights Law on Armed Forces*, Cambridge: Cambridge University Press, 2009, pp. 272. Bibliography in the handbook is further illustrative of this trend.

suggested for application in other countries. It means that legislation and policy review offer nonetheless, suggestions and recommendations for consideration by the participating states of measures for ensuring compliance with international human rights standards and OSCE human dimension commitments. All these objectives explain why the target groups of this handbook have been designed so broadly as to include all individuals concerned, parliamentarians, government officials, policy makers, military personnel, judges, professional military associations, and other domestic and international non-governmental organizations.

As to the structure of the handbook's content, it reflects the whole substantive complexity and scope of the theme. Formally it was divided into six sections containing altogether, 22 consecutively numbered chapters. Section I deals with introductory matters, human rights in the armed forces, notably their scope and issues at stake, and the importance of human rights of armed forces personnel. Section II presents international human rights standards and OSCE commitments, as well as constitutional frameworks and domestic legislation. Section III focuses on human rights issues, notably civil and political rights, military unions and associations, conscientious objection to military service and religion in the armed forces. Section IV examines situation of selected vulnerable groups in the armed forces such as ethnic and linguistic minorities, women, gays and lesbians. Section V is about such specific issues as children associated with armed forces, prevention of mistreatment of armed forces personnel, working conditions and veterans. Section V is devoted to questions of implementation and enforcement and discusses human rights education, the responsibility of commanders and individual accountability, discipline and military justice and ombudsmen. This publication provides at the end useful annexes with excerpts of relevant OSCE commitments, bibliography and selected internet resources.

The book provides a useful and informative insight into the state of human rights in the armed forces. One learns from it that without setting any new standards in this context it is sufficient to ensure the applicability and effective implementation of existing standards and mechanisms in the armed forces. The handbook is no doubt a success story particularly in providing extensive information on the applicable domestic and international law, binding political commitments and models of national policies, arrangements and practices which can serve as recommendations for other countries. Such a comprehensive project on a complex set of issues has not been an easy task and it thus cannot avoid certain shortcomings. One can therefore raise a number of arguable points some of which invite discussion and further review.

First, there is a certain problem with the size of the handbook in the context of its envisaged role. The structure of the handbook has been designed adequately and consistently in spite of the difficulties in accommodating so comprehensive and diverse a list of issues. This success however had to exert its influence on the size of the whole book which, unlike typical handbooks, eventually took the form of an extensive treatise on human rights of armed forces. The book made up of over 250 pages in an A-4 format makes the handbook more useful as a reference textbook than as a user-friendly handbook for instruction or teaching purposes. One can hardly envisage that all the target groups would carefully study the whole text. Its usefulness thus, is for a more specialized audience rather than a wider readership. This weakness could be overcome by preparing a separate publication of a shorter version of the handbook or a short guide which could be more convenient for wider dissemination amongst the armed forces.

Second, as far as dissemination of the handbook (and its possible 'short guide') both publications ought to be translated to languages other than English and Russian. Further Central and Eastern language versions should be targeted in particular. Otherwise, the very access to the handbook will be seriously impeded and its effects

reduced in countries where they are needed most.

Third, the success of the handbook should also be translated into a future follow-up on the changes of law and practice in the OSCE participating states. This conclusion stems from the fact that the handbook provides numerous recommendations which invite assessment of their impact. The need for follow-up is further underlined by rapid changes and reforms undertaken in a number of participating states.

Fourth, there are good grounds for dispute regarding the personal scope of the handbook project. The authors have deliberately decided that the handbook will focus on members of the armed forces proper, although the OSCE Code of Conduct refers its provisions to a broader category of 'military, paramilitary and security forces'. Admittedly, the authors are entitled to delineate and select the groups for their consideration and assessment (see p. 18). However, the scope of the notion 'armed forces personnel', which they have defined for the project purposes, concentrates on both conscripted and professional soldiers but excludes civilian employees in the military service. This category of personnel is substantially increasing with the progress in professionalisation of the armed forces within their larger reforms. In the next edition of the handbook, the status of this group should not be left without a basic characteristic.

Fifth, it is understandable that the handbook confines itself to peacetime situations only. Consequently, wartime situations, deployment of armed forces abroad or at home during crisis or emergencies, have remained outside its scope (p. 19). This approach however, has an inherent weakness and inconsistency because, in the excluded situations, guarantees for human rights of the military personnel, largely though not entirely, continue to be applied. Furthermore, modern instruments of international humanitarian law (Geneva Conventions of 1949 and Additional Protocols thereto of 1977) contain regulations which are deliberately envisaged for application in peacetime and, more, they largely extend the applicability of human rights to those situations. The next edition of the handbook should not ignore consequences of the extended scope of international humanitarian law regulations for peacetime, as well as situations emerging between peacetime and fully-fledged armed conflicts. In other words, the handbook needs more integration with international humanitarian law.

On the whole, small criticisms of the handbook cannot overshadow its usefulness, high professional quality and successful result in filling the gap. With its political and legal assessments and proposed recommendations, the handbook can be regarded as the beginning of a route which would hopefully be not as long as the 'way to Tipperary'.



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Security and Human Rights (formerly Helsinki Monitor) is a journal devoted to issues inspired by the work and principles of the Organization for Security and Cooperation in Europe (OSCE). It looks at the challenge of building security through cooperation across the northern hemisphere, from Vancouver to Vladivostok, as well as how this experience can be applied to other parts of the world. It aims to stimulate thinking on the question of protecting and promoting human rights in a world faced with serious threats to security.

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